

Locke's Consuming Individual: A Theory of the Mixing Body

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Abstract

This article proposes that Locke's basic property-making unit, and thus also contracting unit, is the household rather than the individual. Progressing through two parallel arguments concerning Locke's theory of property—one focuses on the theory of mixing in Roman law and the other on more traditional understanding of labor—it shows how a plurality of people and animals is united under the rule of a single person, allowing the formal category of the individual to expand beyond its corporal limits, into the domestic domain. In some sense, this is an extended version of Pateman's argument concerning the sexual contract, placing the latter within an intersectional framework that moves beyond the question of kinship and the family to the economic questions of class and production, as well as colonial questions of expansion and racial hierarchization.

Locke's concept of property begins with the body. The first principle from which private property can be deduced is the idea of one's "property in his own person":¹ the idea, common at the time, that the body "belongs" to the "I," and thus should be seen as an extension of the person.² Moreover, the first *right* (the right to self-preservation) emerges from natality itself, from our existence as corporeal creatures. "Men, once born, have a right to their preservation, and consequently to meat and drink and such other things as nature affords for their subsistence" (§25).³ We will soon see that the body's nourishment—eating and consuming the world's goods—is indeed key to Locke's theory of property. And finally, the body is what *makes* private property: "The labour of his body, and the work of his hands, we may say, are properly his" (§27). But how does the body make private property? Many readers of Locke have focused on the effect of *removal* from nature which immediately follows the above words: "whatever then he *removes* out of the state that nature hath provided" is his property (§27, my italics).⁴ Some have further tied "removal" to the notion of *improvement*, linking this argument to Locke's emphasis on the *value* that can be added to things through labor.⁵ But equally significant is the claim that Locke makes here about *mixing*: the mixing of labor with the thing that thereby becomes property. Or, in Locke's words, "Whatever... he hath *mixed* his labour with, and *joined* to it something that is his own" becomes his property (§27, my italics). The idea that property emerges from the mixing of labor and object is far from clear, however, and the principal argument of this article is developed through unpacking it.

I offer two main propositions. First, I argue that this idea of mixing should be understood as rooted in Roman law (a link which has been overlooked also by those who worked to identify the influence of Roman law on Locke's theory), thereby offering a revisited interpretation of the legal traditions underpinning Locke's theory of property. Second, and as a broader conceptual intervention, I argue that if we follow this idea of mixing—and, as I show, even if we take other interpretational paths—we need to revisit the underlying conceptualization of "the body" as a property-making unit. I propose that the basic unit to which the right to property attaches, according to Locke, is eventually not the individual body but rather the *household*. I then propose that *enclosure* serves as the image and technique that allows this economic territorial unit to serve as an analogy of the individual body. In this argument, I follow Carole Pateman's argument in *The Sexual Contract* that it is the couple—rather than the individual—that enters into the contract as a single contracting unit. (That is: that the social contract is preceded by a sexual contract, through which the wife/woman is subjugated to the man/husband, and comes to be represented by him, as the sole "individual"). However, because I situate my claims in a different domain—property rather than sex—I arrive at a somewhat different (albeit complementary) conclusion.

Both arguments rest on a third proposition, now quite well-established in the literature, that Locke's theory of property sought to justify England's colonial expansion in America.⁶ The three arguments are linked in several ways; however, each stands on its own, offering different interventions into the literature concerning Locke.

After a brief outline of the concept of property I work with here (section 1, *Property: A Framework*), the two main sections of this article progress through two frameworks Locke relied on to support his theory of property. Each section claims, from a different perspective, that chapter five of the *Second Treatise* entails a shift in its latent conceptualization of property-making units: from the individual body to the household. Because Locke's Social Contract is, to a large degree, a measure to protect property, this articulation of property-making units extends well

beyond the question of possession and accumulation, and has a bearing of the nature of political agents in Locke. Section 2, *Mixing*, makes this argument while also introducing the hypothesis that the language referenced above concerning mixing should not be understood as a metaphor, but rather as Locke's way of appealing to an acceptable legal grounding for the concept of property. I then show how such an understanding of "mixing," as the foundation of property, can only work if we assume that the property-making entity in chapter five is transformed, over the course of the chapter, from a body to a household. Such an entity can then "mix" things, particularly land, with itself, thus legitimizing the accumulation of land. The following section, *Labor*, progresses through a similar structure, but works with a more conventional reading, which places labor as the foundation for property-making. Very much along the lines of the argument concerning mixing, I show that also this more traditional understanding of Locke's theory coheres only if we assume the shift from body to household outlined above. Being more straightforward, this reading of Locke allows me to introduce my argument through a set of more familiar critiques. I end (section 4, *Metabolism/Enclosure*) with some notes on enclosure that place the argument within the context of America's colonization.

Property: A Framework

Locke's concept of property is, at the very least, two-fold, and this paper focuses on the narrow conceptualization presented in chapter five of the *Second Treatise*. The wider concept refers, alongside objects or estate, to life and liberty.⁷ However—as Barbara Arneil makes clear—this is *not* the concept used in chapter five, where property is indeed understood as property in and of objects.⁸ This may not be accidental. David Armitage shows that chapter five is "an intruder," inserted into the *Treatise* at a later stage of writing—in all likelihood while Locke was revising the *Fundamental Constitutions of Carolina*.⁹ Considering this preoccupation with the question of settlement in America, the use of different language may be indicative: the conceptual narrowness allowed Locke to delineate a concept of property that worked well with this political project, even if it betrayed some of his more universalist ethics.

Locke opens chapter five by identifying the two main theories that stand in the way of his own theory of property. The first is the common-law understanding of property as the right of use and the related system of commons. The second is the idea of full, undivided, and unlimited dominion, according to which the notion of private property derives from an original right granted by God to an original sovereign (Adam, "and his heirs in succession.") The former is an obstacle to the accumulation of private property; the latter not only renders property a function of the sovereign's consent—a hierarchy which Locke would reverse by turning sovereignty into a derivative of property¹⁰—but is also historically and conceptually entangled with a theory of absolute power, which Locke sought to undermine. The *First Treatise* is dedicated to refuting the idea of full, inherited dominion; chapter five of the *Second Treatise* focuses on showing how private property can be deduced from an original state of being in which the world has been given to men in common.

To refute the above and to establish a new concept of property—revolutionary, yet grounded in solid legal theory—Locke, like many jurists and legal theorists of the time, drew on several existing traditions, often strategically, at times partially. Locke wrote against Filmer's understanding of property as originating from the dominion of an absolute sovereign; but he also took against Pufendorf's understanding of property as emerging from *agreement* (here, he rather relies on Filmer¹¹), and indeed against Pufendorf's argument that common land establishes rights of use but not of appropriation.¹² He salvaged Grotius's understanding of original common ownership from Filmer's critique, but chose not to adopt Grotius' absolutist paradigm.¹³ He did, however, use Grotius to establish the link between body and property-making.¹⁴ He drew on principles from the Levelers to establish a doctrine of Natural Right,¹⁵ but departed from their doctrine in order to protect the prevailing unequal distribution of property.¹⁶ And the list goes on.¹⁷ This brief review cannot exhaust the legal and theoretical legacies of Locke's theory of property. In any case, this is not my primary intention here. I outline them here in order to underscore the wider puzzle, of which my analysis here is but a piece.

The rest of this article progresses through two theories of property from this plurality of traditions. In the next section, I read Locke's theory of property as dependent on a specific element of Roman law, an element overlooked even by the scholars who insist that Locke relied on Roman law in his theory of property: the theory of mixing.¹⁸ The subsequent section looks at *labor* as the main grounding for property.

Mixing

Let us return to §27, which makes one of the closest links between corporeal mixing and property:

Whatever then he removes out of the state that nature hath provided, and left it in, he hath *mixed his labour with, and joined to it something that is his own*, and thereby makes it his property (§27, my italics).

I suggested above that Locke here proposes that for an object to become property, one needs to *mix* it with, or *join* it to something. As Nasser Behnegar puts it: Locke’s language implies that when labor alters an object, “something of the cause of this alteration must necessarily be present in the altered object just as something of venison must be present in me if it is to nourish me.”¹⁹ Indeed, in §§27–28 Locke repeatedly points to annexation and addition as essential to property-making.²⁰ This idea has roots in natural law theory, with its notion that the possessor is somehow extended to encompass the objects that they come to own (such as the fruits they gathered.)²¹ However, as early as Hume—who claimed that “we cannot be said to join our labour to any thing but in a figurative sense”²²—critics have repeatedly argued that any conception of property based on mixing labor with things is nonsensical, or at best weak figurative language.²³ But “mixing” was a central concept of established theories of property of the time, specifically the Roman theory of mixing—which, to the best of my knowledge, has not yet been seriously considered in relation to Locke. My proposition, therefore, is that given its legal histories and lineages, the concept of mixing should be seen as relevant to interpreting Locke’s theory of property. For now, I present this as a hypothesis, yet to be anchored in the archives of letters, comments, and reading notes demanded by the history of ideas when presenting a fresh interpretational perspective. As I endeavor to show, however, this argument is anchored in the internal logic of the text, and thus warrants consideration as a valid interpretation.

To be clear from the outset: my argument is not that the Roman theory of mixing was the sole, or even the dominant, influence on Locke’s understanding of property. Rather, I seek to establish that it was one element of a multifaceted theory of property—albeit an element that makes it possible to overcome several interpretational predicaments. As noted above, Locke had negotiated various legal traditions in order to limit what he wanted limited (sovereign rule, the commons), and to legitimate what he wanted legitimized (enclosure, the right of rebellion, self-ownership, colonization). As I show here, and as has been argued previously, these frameworks were not, in themselves, sufficient for the tasks that his larger projects required. Theories of labor, improvement, the Roman theory of First Occupant—all introduced tensions, if not outright contradictions, into his argument. My two propositions—to read Locke’s theory of property as relying on the Roman theory of mixing, and to see the household as the basic property-unit—relieve some of these tensions, allowing a more coherent theory of property to emerge.

According to Roman law, if two materials are mixed to form a new material, the new entity belongs to the person who made the mixture, since he is seen as the first occupant of the new entity.²⁴ This is only the case, however, if the two mixed objects form a new *body* (a defined *thing*; an indissociable whole). The example from the *Digest of Justinian* is telling: “If ‘A’ fixes an arm or a leg belonging to ‘B’ to his own statue, . . . ‘A’ has become the owner of the whole.” Whether B can legitimately claim compensation for the leg depends on the nature of fixing (the wholeness of the new body):

If an arm of a statue has been joined to the rest of the statue by welding, it is merged in the unified whole of the larger part, and once it has become another’s property cannot, even though later broken off, revert to its former owner. It is not the same with what has been soldered with lead, because welding effects fusion of two things made of the same material, whereas soldering does not have that effect.²⁵

In other words, if the arm has been joined to the rest of the statue without being fused into a *unified body*, then B maintains some right in the arm (B can, for example, demand compensation if the statue is broken, or can reclaim the arm); but if the arm has been merged to the statue, becoming part of an indissociable whole, then it will become and remain A’s, no matter what happens to the statue subsequently; A’s claim to the property is finalized thereby. This finality will play an important role in the argument that follows.

In the *Digest*, “mixing” serves as a complement to the theory of First Occupant, one of Locke’s main points of reference.²⁶ The latter allowed bridging common use with ownership (if one is the first to take hold over something situated “in common,” he becomes its owner); the former (the theory of mixing) came to clarify the status of being “first” vis-à-vis some “objects:” “If corn belonging to two parties has been mixed together,” the mixture will not belong to the person who made it (who mixed), as this mixture does not form a new and indissociable whole and so the mixing person is not seen as having a “first hold” over it. Ownership is rather vested in the parties to whom the

corn originally belonged—either in common or in line with their original share, depending on the terms of the mixing (consensual or not).²⁷ However, “if mead is made from my honey and your wine,” that is, a *new whole* is produced, “it belongs rather to the maker, since it does not retain its previous character.”²⁸ This change of character of a therefore-new entity is what renders the person a first occupant.

Mixing thus determines the status of the products of labor in relation to the framework of the First Occupant theory; Locke’s reliance on the latter suggests that his adaptation of the language of mixing may not be accidental or metaphorical, but rather intended to provide familiar legal grounding to his ideas. Moreover, Grotius’s critique of this very theory was familiar to Locke;²⁹ hence, at the very least we have concrete evidence that Locke was familiar with the Roman version. This familiarity seems to have shaped at least the language, if not the argument, of chapter five. Locke further deployed the notion of mixing extensively in other contexts, with quite a few textual resonances to the examples given in Roman law.³⁰

However, if we think on the idea of “mixing *labor* with...” within the Roman tradition, labor cannot be understood as a *power* operating on *objects*. It should be understood, rather, as a way of conceptualizing the body itself: in Roman law “mixing” indicates a relationship between two objects. The “mixing” of labor with property-to-be should thus be understood as a way of connecting objects *to the body*; a form of “annexation,” to use Locke’s term. Indeed, according to §27, mixing and joining should be with/to something that “*is his own*” in order to justify a claim to property that would satisfy Locke. At that point in the text, there are only two related “things” “that [are] his own”: the body itself (or rather personhood, which cannot be reduced to a legal status because from the outset it is marked by “hands” and “body” and because, as mentioned above, it is linked to natality); and labor, or the doings of this body (“the Labour of his body, and the Work of his hands”), which is “the unequivocal property of the labourer” (§27).³¹ Given, as others have argued, that in this context labor cannot be conceptualized as anything but a corporeal entity—a thing one can *possess*, “a space-occupying material object to be combined with other such objects”³²—then the distinction between the two (body and labor) is elusive. What transpires, then, is a model in which property emerges by *becoming one with the body*. Put differently: when a body is mixed with a thing and a thing with a body, property is made.

This notion of mixing works well at the beginning of the chapter on property, when digestion is presented as the paradigmatic (or at least first) form of property-making:

The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it (§26).

Digestion is therefore the most elementary form of property-making. In its most rudimentary form, as in the case of the “Indian,” something—significantly, fruit or venison—must become “*part of him*,” a component of his body via nourishment, for it to become “his” (i.e., property). The *Essay* provides the ontological foundation for this digestive incorporation: “that, which was Grass to Day, is tomorrow the Flesh of a Sheep; and within few days after, becomes part of a man.”³³ Elsewhere, I have argued that Locke applies two different logics of property here, divided along colonial lines: the first is based on labor, the other on digestion or incorporation. In the case of his “Indian,” Locke requires that “he” digest the object so that “another can no longer have any right to it”; in the case of the “civilized parts of mankind” (§30), however, labor would suffice.³⁴ Yet it may be more accurate to argue that this is not a matter of different logics, but of different stages of development within a single logic:

Digestion provides Locke with a powerful model; it conveys a strong sense of injury in the event of infringement on property. With digestion, property gains the same status as the body, and violating it is a clear case of causing harm. Accordingly, the first right referenced by Locke in chapter five is the right to self-preservation, which is immediately followed by the consequential rights to “Meat and Drink, and such other things, as Nature affords for their Subsistence.” Indeed, the need for nourishment “figure[s] prominently in Locke’s political theory of appropriation.”³⁵ Chad Lucke further notes that digestion is the principle limiting property: “The language of ‘spoilage’ indicates eating as the limit to what can be appropriated. We can only take possession of those things we can ourselves consume before they spoil.”³⁶ It is therefore possible to argue that for Locke, “eating is the epitome of human agency both because it requires work and because that work is transformative. Labour turns acorns and apples into food, which digestion then turns into flesh.” It is the transformation done via eating that turns “common matter into personal property, giving all men a property in their own person. The possessive individual of Locke’s liberalism eats his way to ownership.”³⁷ The idea that labor is a form of mixing is rooted, at least conceptually, in the idea that labor (as a body: as the doings of hands, for example), is mixed with eatable objects, and then food is mixed “into [one’s] self-possessed body.”³⁸

Laura Ephraim further suggests that the Lockean scheme within “ingestion both entails and justifies appropriation,” renders eating not only a foundation for Locke’s theory of property, but also for his critique of absolute power, as he links “the debate about who subdues whom with the question of who eats what.”³⁹

Digestion, in this sense, is also *the ultimate mixture of body and thing, incapable of being restored to its original components*. However, rather than a dispute between two people in relation to a third object (as is the case in the examples given in Roman law), it comes to address a potential dispute between “me” and the rest of humankind (to whom the object has been given in common,) over an object that has now become part of “me.” This full annexation of the object by one party in the potential dispute makes any effort to contest property nonsensical; therein lies its power. But this is also the point where this theory must face its own limits: this understanding cannot be extended beyond the act of consumption. If the mixing does not create a new, fused whole (if the arm of the aforementioned statue is joined to the body with nails, for example, rather than welded), then the parts can be reclaimed by their previous owners.

Accordingly, if we think through the theory of mixture (but also if we use other tangential interpretational frameworks, such as Tully’s claim that property is based on the act of creation⁴⁰), then this model of digestion does not easily lend itself to the subsequent development of the argument. If digestion is part of (a metaphor for?) a direct link between property-making and the body which opens chapter five, as early as in §28 annexation or mixing become more distant from the individual body. Section §28 moves us from digestion to eating, boiling (a mediation between nature and consumption), bringing home (a mediation between the common areas and that which marks the extended borders of the self), and picking up. After Locke establishes digestion as an incontestable form of property-making (“No Body can deny but the nourishment is his”) he asks:

when did they begin to be his? When he digested? Or when he ate? Or when he boiled? Or when he brought them home? Or when he pickt them up? ’Tis plain, if the first gathering made them not his, nothing else could (§28).

Akin to digestion, “picking up” or “bringing home” are supposed to be processes of mixing body (labor) with object (now property). However—and distinct from the case of “digesting” (and perhaps even “eating” or “boiling”)—if I “pick” an acorn or “bring it home,” I do not *create* anything new in the world, the outcome is far from being a *mixture*, and its counterparts (me and acorn) are certainly *distinguishable* and dissociable. Therefore, as Matthew Kramer argues, while digestion can be seen as “the catalyst or keystone of rights of property” in Locke, it nevertheless fails to provide a justification for property across the scope outlined above.⁴¹ Other critiques have indeed asserted that “one clearly transforms an acorn or an apple when one boils, eats, or digests it, but not when one gathers or picks it up.”⁴² It might be that the entire theory collapses at this point, as Kramer and others propose.⁴³ Or alternatively, as I propose, something needs to be modified in the scheme, so that “picking up” can be accorded the same status as digestion: the object must become part of me, or a new body, in some sense, in order to legitimize the claim to property, and thus the “me” must shift in its conceptual contours.

This required modification is a transition—one that indeed occurs throughout chapter five—from the body as the basis of property (a form of property-making, whose quintessential model is digestion) to a new territorial unit, the household, which can make property according to a similar model of expansion. The “self” that “mixes” acorns with itself in the act of picking up is the household or estate, whose enclosure mimics the logic of bodily borders with which we began. Ephraim’s term “partition of the digestible” (which seeks to denote the division of the Lockean world into human eaters and non-human food),⁴⁴ also captures beautifully the practice of enclosure itself. Enclosure partitions the domain of “the digestible”—that is, the world, and all (to-be-)property in it. The theory of mixing makes one element of this transition particularly important: the household can *mix land* with its “body,” thereby making it property; the household metabolizes land, as it were, and assimilates it into the property of the Lockean dominus. At this point, “digestion” may be replaced with “incorporation”; pointing to a similar mode of uniting discrete elements (land, labor, persons) into a corporate entity, yet allowing this entity to be more expansive than the individual in charge of it.⁴⁵

Here also lies the differential nature of the logic I alluded to above, which separates the “Indian’s” digestion from this more expansive notion of incorporation. As I further argue in the last section, the possibility for “mixing” land rests on the practices of enclosure and sedentary agriculture: enclosure is the mechanism through which this “digestive” process takes place. Therefore, it does not equally apply to all. Between §26, which points to the need for food become a “part of him” to establish a legitimate claim to this specific object, and §30, which takes us to the looser forms of

annexation, a latent transition in the concept of the individual seems to have occurred. Whereas §26 explicitly points to the “Indian” as an example of “the individual” through which the logic of property can be deduced, by §28 Locke has moved to a general “he,” and by its end to “me”; §29 already introduces servants to highlight the different setting. And if one missed it, this division is reasserted in §30, with a clear distinction between an “Indian,” who is subject to an “original Law of Nature for the *beginning of Property*” (italics in original), and “the Civiliz’d part of Mankind,” subject to a more convoluted system of property.

What we see here is a shift which is simultaneously temporal, geographical, and conceptual: the “Indian” in America represents an original or primitive logic of property that is then developed. Drawing from Uday Mehta’s work, Vanita Seth has called us to see how the Lockean individual is in fact a project. Rationality, alongside freedom, is but a potential, Mehta shows; a universal kernel which needs to actualize, but sometimes fails to do so fully or properly.⁴⁶ And in the spaces of the colonies, this failure seems to be the normal order of things.⁴⁷ The state of nature thus entails *two* models of individuality, separated by a temporal trajectory of actualization encapsulated in the transition outlined in the previous paragraph: one, whose ability to accumulate is limited—the “Indian” who “knows no enclosure”; and another, for whom picking-up can fully take on the logic of incorporation, given that it takes place within a unit that is an extension of his own corporeality—the settler, who, as Mills and Pateman have argued, is ultimately the political agent of the social contract imagined through the case of America.⁴⁸

Locke, then, based his theory of mixing on an extension of the individual body, ultimately morphing it into the estate. This same morphing can also be tracked from the perspective of another theory of property, which is much more prevalent within the interpretations of his theory of property: the theory of labor.

Labor

To understand Locke’s theory of labor and its role in his overall scheme, we first need to understand it in its context. The question of property has always been an imperial question. It was the question that underpinned the commodification of race, commercial expansion, the securing of foreign markets and the global transport of laboring bodies, the extraction of wealth via the displacement and dispossession of native populations and First Nations. This imperial context set certain limits on the possible legal and conceptual anchoring of claims to property. For example, within such a colonial setting property could not be based on the consent or the agreement of others, as Pufendorf contended. This was not merely because such a theory assumes the precedence of contract over property, threatening Locke’s understanding of contract as a function of property rather than the other way around; it was also problematic for his argument because a reliance on contract would have undermined Locke’s colonial efforts in Carolina, where he sought to nullify claims to land based on contractual agreements between indigenous communities and first settlers, in order to delegitimize indigenous territorial claims.⁴⁹ This is yet another reason explaining why Locke only accepted the possibility of property exchange via agreement in those parts of the world where a culture of sedentary agriculture already existed, and where money was used—two elements which he explicitly says Indigenous Americans are lacking.⁵⁰ A similar limitation on the possible justification for property arises in relation to the right of first possessor/taker/occupant cited by Roman law sources as part of the Laws of Nations (*jus gentium*). This is the idea that if something does not belong to anyone or is given in common, then it will become the property of the first person to take hold of it. Thus, the person who picks up an acorn under an oak that is given in common or an apple in the forest (referring to Locke’s examples in §27), becomes their owner. But, even though this understanding was central to Locke’s conceptualization of property,⁵¹ it fell short of providing justification for England’s colonial expansion: ultimately, “most of America, and certainly all that the European powers believed worth developing, was *by their own criteria, already occupied*.”⁵² The need to shift between various traditions that I briefly outlined in the first section can thus be seen also in the backdrop of this colonial project, and Locke’s theory of labor was part of this equilibrium.

For the theory of the First Occupant to legitimize land appropriation in America, a very specific theory of labor had to be put into effect. As has been shown in detail previously, the seemingly commonsensical theory of labor—which begins with eating an apple, and is carried through the time and effort invested in picking it, if not growing it—was actually based on a particular model of European agriculture. As this argument has been made by many, I will not elaborate on it here, but as one of its elements is significant to what follows, it merits repetition. Despite being fully aware of agricultural practices among indigenous populations,⁵³ Locke portrayed Indigenous Americans as hunters-gatherers. Importantly, he did not deny their *labor*, which he took to include practices such as hunting and gathering;⁵⁴ nevertheless, this particular mode of labor could only generate limited property rights. It secured property claims vis-à-vis objects (those they collected or hunted), but not vis-à-vis the territory in which they resided. The former did not

“interfere with England’s plans for settlement in the same way that claim over land [would] do.”⁵⁵ In other words, even though the basic principle of property could accommodate ownership of the deer they ate or hunted, they had no right in the territory itself—which could thus be marked as “waste,” and available for acquisition. Hence, by defining labor *on the land* “in terms of European agriculture and industry: cultivating, subduing, tilling, and improving,” Locke could argue that a right in objects was distinct and separate from a right in the land—which Indigenous Americans did not have.⁵⁶ Fitzmaurice can thus claim that Locke “insists on a definition of occupation *as* labour.”⁵⁷ We could add that given the emphasis on land as the “chief matter of property,” this also works in the other direction: *labor itself is defined as occupation*.

And yet, this notion of labor introduced a crisis to the Lockean scheme. If physical work were a necessary and sufficient condition for the production of property, then it would stand in the way of Locke’s theory of accumulation, which made it possible for some to profit from the labor of others. When Locke argues that “the grass my horse has bit; the turfs my servant has cut; and the ore I have digged . . . become my property” (§28), he introduces a break or mediation between labor and property. It can be argued that the horse, and even the slave—not mentioned here but certainly part of this story⁵⁸—do not have the status of an individual. Lacking such a status, they can be seen as an extension of “my” body in some strange ways; accordingly, *their* labor can create *my* property. But this is not the case for the servant, who is an independent person, merely selling his labor power temporarily. The same can be said for other types of wage laborers, as we see in other writings of Locke, who produce property for others despite the fact that they are independent individuals.⁵⁹ If property is generated through labor, then the labor of the servant should generate property for *them*, rather than for “me.” But Locke does not make this claim. Perhaps more significantly, Locke does not even make this claim in order to refute it. Locke engages explicitly, and at times in detail, with other limits on accumulation. The limit set by the principle of no spoilage (the idea that the natural spoilage of things creates a bar in relation to what can technically and morally be accumulated) is removed through the use of money;⁶⁰ the limit set by the principle of abundance (the idea that one can accumulate only as long as there is enough for everyone, an important ethical constraint in Locke’s account), is obviated via the assumption of ample “waste lands” in America, available to those in want or need. But Locke does not engage at all with the limitation created by the power of individual labor: the principle according to which one can accumulate only that which one has individually labored on/for, or mixed with his own labor.⁶¹ On the contrary, Locke contends that the servant or wage laborer has chosen to alienate their body (their labor power), rendering it just another thing that can be accumulated by the landowner.⁶²

Accordingly, even though chapter five begins by establishing a close link (if not a complete equivalence) between body, labor, and property, somewhere along the way the product of labor is severed from the laboring “hands” and “body” (§27), and is annexed to the body of another. Individual labor therefore cannot be a sufficient principle with which to anchor a claim to property. With the question of inheritance, we see that it is not a necessary principle either (children can inherit property without laboring for it). Rather, labor is itself a form of property; as such, it can be acquired by others.

Note that the structure of both the argument and the question of interpretation proceed here along the lines of the previous section: the distancing of property from the individual body creates a tension in Locke’s theory of property. I propose that the solution, too, is identical. This predicament concerning the relationship between labor and property can be resolved if we engage seriously with Locke’s choice to identify wage labor with servitude in his main political treatise. Servants were legally defined (as such) when they came under the title of the master; in this sense, they *were defined by virtue of becoming part of the household*. Alongside the horse, the slave, the wife and children, the servant and other domestic workers formed what I propose is the real property unit in Locke. If Locke’s basic unit of property is not the individual but rather the household, then the servant is *by definition* a part of this unit and his labor incorporated into the unit by virtue of this legal status. To put it differently: if the “I” were to be extended to the household itself, or encapsulated by the individual who came to represent it as a whole (the landlord), then there is no contradiction in this theory of labor. Not the labor of one’s individual body, but the labor of everyone included within the (non-corporeal but very concrete) boundaries of the estate generate property for “me.”

This is, in a way, an extended version of Pateman’s argument concerning the sexual contract, placing the latter within an intersectional framework that moves beyond the question of kinship and the family to the economic unit of the household. It links Pateman’s critique to critiques by Charles Mills, Macpherson, and others, drawing them within a single structure: before the social contract takes place, before we come to shape the contours of our shared life and legitimate forms of rule, a set of other “contracts”—sexual, racial, classed—is instituted. Through these contracts, a plurality of people and animals are united under the rule of a single person; it is this plurality, submerged into that

single person and thus politically erased, that enters into the social contract. And this plurality can only become part of a singular principle if we think within the framework of domesticity. With this unification of bodies within the household, the theory anchoring property in labor, can be extended from the laboring body to the horse, the servant, and beyond.

Metabolism/Enclosure

It would not be a novel argument that enclosure was important for Locke. But with the above arguments, something additional transpires: enclosure becomes the foundation for the conceptual shift from *body* to *household*. If the logic of property begins with bodily borders, then enclosed land becomes the demarcated, bordered object to which things can be annexed, joined, or mixed-with, to be made into property. Thus, everything occurring within this unit—the picking of apples, or the horse’s eating of grass—can be said to constitute a single whole (as required by Roman law), thereby conferring the rights and benefits of property.⁶³ In the primitive form of property-making, “each human being’s right to the exclusion of all other persons from his body was *ipso facto* a right to the exclusion of all other persons from the victuals that had become the stuff of his body.”⁶⁴ In its extended form, the demarcation of the enclosed domain as a private sphere does the same for everything within the territory of the household; in a global setting, it provides justification for England’s (or, indeed, any other European country’s) colonial acquisition of land. This, perhaps, is yet another reason why fences—as noted by Wendy Brown—play such an important role in Locke’s theory.⁶⁵

This point becomes clear if we see what happens to property when its “chief matter” shifts from object to land. Locke famously observes that “the chief matter of property [is] now not the fruits of the earth, and the beasts that subsist on it, but the earth itself; as that which takes in, and carries with it all the rest”; and that “property in that too is acquired as the former.”⁶⁶ Once land takes the place of objects consumed by the body (deer, acorns), then the body itself must be replaced with a “body” that can “consume” land: domain. Rather than mixing a digestible object with the body, in this new model (importantly, still a precontract model) I mix household with land through labor to create a new territorial entity that is thus my property. And much like a body that keeps growing as it digests more food, further lands can be enclosed, enlarging the estate. Digestion (corporeal expansion) is replaced with an incorporation that legitimizes territorial expansion. This is precisely the difference between the “Indian’s” claim to property in things, and the European’s claim to property in the land—a difference whose two sides can still fit within a single structure, encapsulated by the image of digestion/incorporation. The “Indians” failed to assume the ontological foundation that would allow the shifting from object to land—the mixing of land with “body”—that is, they failed to form stable households (imagined through the technique and figure of enclosure).

This “failure” to establish stable households was indeed an ongoing concern for Englishmen in America, particularly those engaged in missionary work. Jack Turner notes the links between Locke’s endeavors in America and the work of other missionaries, arguing that Locke’s writings on tolerance did not contradict—and indeed, should be read in conjunction with—attempts at (mass) conversion.⁶⁷ One missionary with a significant influence on Locke⁶⁸ was John Eliot who, as Teresa Bejan shows, was quite obsessed with natives’ sedentarization. From 1650 on, Eliot oversaw the establishment of fourteen English-like “praying towns,” that were to become the home of converted Indigenous Americans. Settling down, he believed, was the only way to prevent “scandal”; otherwise, Indigenous Americans “could easily run away” if they sinned.⁶⁹ As long as “they live[d] so unfix’d, confused, and ungoverned a life, uncivilized and unsubdued to labor and order,” they “could not be trusted with that ‘Treasure of Christ.’”⁷⁰ The question of securing settled households and family formation was thus at the root of English civilizing mission in America, and the presumed absence of these households was key to modes of colonial governance. In Locke, this presumed failure meant that Indigenous Americans could never make the conceptual and physical shift from body to household, which would allow for the theory of mixing to work beyond objects—in this case, to the appropriation of land. As he “knows no enclosure”—no sedentarism—it is only the boundaries of his body he can “enclose” around digestible objects: enclosing “his mouth around fruit or venison taken from unenclosed land,”⁷¹ or further his stomach as these are digested, for them to be “his, i.e. a part of him” (as we saw above). Land, then, remains something “the Indian” can never accumulate.

This “failure” works in tandem with another “failure” of the Lockean “Indian”: the failure to acquiesce to the use of money and thus remove the limit on accumulation created by natural spoilage.⁷² Both presumed failures join to undermine the possibility of land accumulation by indigenous groups. Money renders accumulation technically possible, morally justifiable, and the logical order of things. Equally importantly, money creates an *urges*, a *desire*, for

accumulation. This desire was not there before: without money, the Indigenous Americans were “confining their desires,” with “no Temptation to enlarge their Possessions of Land” (§107, §108).⁷³ But significantly, as the last quote insinuates, in an agrarian society, the drive for accumulation is a drive for the accumulation of *land*; it is a desire for territorial expansion, for which money is just a *means*. It was land, therefore, that was at stake in the effort to secure unfettered accumulation. This was the case not only because Locke was thinking in and from a preindustrial mode of accumulation, wherein land is the “chief matter of property”; it was also because land was at the heart of settler colonialism, the mode of global expansion Locke was invested in justifying. In other modes of imperialism and colonialism, the extraction of resources, labor power, and capital from the colonies and colonized were the key issues; but in America and other settler contexts, it was territory itself. In these conditions, accumulation *was* expansion; it is this desire for accumulation that Anthony Pagden describes as a “seemingly inescapable desire for territorial expansion through conquest.”⁷⁴ The “Indian’s” presumed lack of desire for land made it possible for Locke to extend the fiction that no one is injured by English expansion into and in America. Conquest could thus be portrayed as the peaceful cultivation of land,⁷⁵ and the scarcity he admits arrives with the use of money (§45), and with it the ethical constraint on further accumulation can presumably be resolved. Yet the stratifying acts of property do not end here. Rather than any other household, what emerges at that historical moment is the plantation,⁷⁶ allowing a truly unlimited accumulation of wealth, unprecedented exploitation of laboring bodies in slavery, and a massive project of expropriation.

Households are the units that lie at the basis of any significant claim to property (i.e., a property claim relating to land⁷⁷), and thus any political claim. Moreover, these are essentially *colonial* households, given their tendency—an urge, a reason—to expand, and the practice of territorial *expansion through global dispossession*. “Dispossession,” because, in a reality of limited resources, the desire to possess and the resultant incorporation of land through enclosure ultimately produces an imperial need. Locke seems to have recognized the two sides of this equation; as Karl Olivecrona notes, the “age of abundance”—as he refers to it—is placed by Locke in two places: the past and America.⁷⁸ Locke’s awareness of the reduced wealth of resources is highlighted by his use of the past tense when referring to the assumption of plenitude: there *was* a time when there was enough for everyone, but this seems no longer to be the case.⁷⁹ Yet, since the right to accumulate is conditioned by abundance in Locke (by the fact that everyone can have a sufficient share, and thus no one can claim injury), an assumption of plenty had to be restored. It was made by appealing to the “uncivilized” spaces of the globe, where land is still “free.” This is the second side of the equation. Indeed, Locke limits the present-time relevance of the availability of resources to America: “And the same measure may be allowed *still* . . . for supposing a man, or a family, in the state they were at first peopling the world . . . let him plant in some inland, vacant places of America, we should find that the possession he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of human kind” (§36, my italics).⁸⁰ *The colonial project was therefore the precondition for the ethics of accumulation.*

Conclusion

Reading Locke’s basic property-unit as the household rather than the individual explains how the labor of those who fall within this territorial unit (the horse, slave, servant, day laborers working in the field, the wife—whose laboring is not even mentioned in the text,⁸¹) produces property that is annexed to that territory rather than to their own bodies; annexed to the landlord rather than to the laborer. The difference between landowners who can accumulate and others who cannot is precisely the ability to establish such a corporeal-like extension to the act of accumulation. This shift, from the body to the enclosed territorial unit, also creates a defined entity that can continue accumulating as a model of self-expansion (incorporation), thereby making it possible to apply the theory of mixing to land as property; it allows for “picking up” (as an example) to be interpreted as a form of mixing. This model further creates a clear distinction between two modes of property—one grants property merely in things, the other in land—while anchoring both in a single universal logic, captured by the metaphor of digestion. Enclosure simply enlarges the incorporating units. In this sense, we find here yet another version of a familiar liberal apparatus through which universalist principles either entail or produce hierarchies and exclusion therein.⁸²

Considering the transition from the individual to the household from the perspective of labor provides a social perspective to the story of accumulation. It highlights the formation of social distinctions, specifically classed and gendered divisions, between those who work or labor and those who own. Considering this transition from the perspective of the theory of mixing provides an ontological foundation that makes it possible to align “picking up”

with the logic of digestion, as corporeality itself expands from the individual to the household. But as an ontological formation, it can function only—or at least best, or in a more stable way—with a clear border demarcating the household, rendering it into a corporeal unit. Here enters the theory of enclosure. With it, the corporeality of the body, which clearly produces property when it mixes an object with itself, becomes part of the configuration of the household as an accumulative entity. Picking would thus be quickly transformed by chapter five into sedentary agriculture, and, in due course, into land accumulation and ultimately, to the system of plantations.

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Notes

¹ John Locke, *Two Treatises of Government and a Letter Concerning Toleration* (Yale University Press, 2003,) §27. According to Locke this property in one's own person is "the great Foundation of Property" §44. Herein all references to the *Second Treatise* will be with section number only.

² For an analysis of this notion in natural law, see Karl Olivecrona, "Locke's Theory of Appropriation," *The Philosophical Quarterly* (1950-), vol. 24, no. 96 (July 1974): 220–234.

³ Locke thus places basic care for corporeal needs of infants within the terminology of rights. For an analysis of the history of this anchoring of property in the body, see Charlotte Epstein, *Birth of the State: The Place of the Body in Crafting Modern Politics* (Oxford, UK: Oxford University Press, forthcoming).

⁴ E.g. Onur Ulas Ince, "Enclosing in God's Name, Accumulating for Mankind: Money, Morality, and Accumulation in John Locke's Theory of Property," *The Review of Politics* 73, no. 1 (2011): 29–54; Stanley C. Brubaker, "Coming into One's Own: John Locke's Theory of Property, God, and Politics," *The Review of Politics* 74, no. 2 (Spring 2012): 207–32.

⁵ E.g. Neal Wood, *John Locke and Agrarian Capitalism* (Berkeley, CA: University of California Press, 1984), especially 53–63; Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c.1500–c.1800* (New Haven, CT: Yale University Press, 1998), 77–78. On the improvement of the common stock specifically, see Onur Ulas Ince, *Colonial Capitalism and the Dilemmas of Liberalism* (Oxford, UK: Oxford University Press, 2018); Henry Moulds, "Private Property in John Locke's State of Nature," *American Journal of Economics and Sociology* 23, no. 2 (1964): 179–88.

⁶ Most of those readings, as well as my own, focus on chapter five of the *Second Treatise*. The claim is that this chapter is dedicated, at least in part, to a justification of colonization; it is primarily concerned not with ownership proper, but rather with establishing the superiority of "European technics of land improvement" over "Amerindian culture." Some of the principal accounts on this subject include Tully, *An Approach to Political Philosophy*; Armitage, "John Locke, Carolina, and the 'Two Treatises of Government'"; Barbara Arneil, *John Locke and America: The Defence of English Colonialism* (Oxford, UK: Clarendon Press, 1996); Farr, "Locke, Natural Law"; Tully, *An Approach to Political Philosophy*, 137–76; Herman Lebovics, "The Uses of America in Locke's Second Treatise of Government," *Journal of the History of Ideas* 47, no. 4 (October–December 1986): 567–81. For a more focused account of property or capitalism and colonialism, see Ince, *Colonial Capitalism*, Chapter 2; Barbara Arneil, "Trade, Plantations, and Property: John Locke and the Economic Defense of Colonialism," *Journal of the History of Ideas* 55, no. 4 (October 1994): 591–609. Alternatively, see Vicki Hsueh, "Unsettling Colonies: Locke, 'Atlantis' and New World Knowledges," *History of Political Thought* 29, no. 2 (2008): 295–319.

⁷ Property as "life, liberty and estate." See James Tully, *A Discourse on Property: John Locke and his Adversaries* (Cambridge, UK: Cambridge University Press, 1980), and a subsequent clarification in James Tully, *An Approach to Political Philosophy: Locke in Contexts* (Cambridge, UK: Cambridge University Press, 1993), chapter 4.

⁸ Arneil, *John Locke and America*. See also C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford, UK: Oxford University Press, 2011), 198.

⁹ David Armitage, "John Locke, Carolina, and the 'Two Treatises of Government'," *Political Theory* 32, no. 5 (2004): 602–27.

¹⁰ Locke sought to establish property as *preceding* sovereignty. The sovereign (or contract) emerges to protect *already existing* property. Thus, even though in established countries, enclosure (property) is conditioned on consent, “in the beginning and first peopling of the great common of the world it was quite otherwise. The law man was under was rather for appropriating” (§35).

¹¹ Peter Garnsey, *Thinking about Property: From Antiquity to the Age of Revolution* (Cambridge, UK: Cambridge University Press, 2007), 142–43

¹² Arneil, *Locke and America*, 57

¹³ Tully, *An Approach*, 101–17.

¹⁴ Epstein, *Birth of the State*.

¹⁵ Richard Ashcraft, *Revolutionary Politics and Locke’s Two Treatises of Government* (Princeton, NJ: Princeton University Press, 1986); Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, UK: Cambridge University Press, 1979)

¹⁶ McNally, “Locke, Levellers and Liberty: Property and Democracy in the Thought of the First Whigs,” *History of Political Thought* 10, no. 1 (Spring 1989): 17–40

¹⁷ A thorough analysis of these traditions and sources of influence can be found in Ince, *Colonial Capitalism*, Chapter 2, and Tully, *A Discourse on Property*. Wood further places Cicero’s views of the original acquisition of property in a tradition leading to John Locke (Neal Wood, *Cicero’s Social and Political Thought* [Berkeley, CA: University of California Press, 1988]. See also Benjamin Straumann, *Roman Law in the State of Nature: The Classical Foundations of Hugo Grotius’ Natural Law*, trans. Belinda Cooper [Cambridge, UK: Cambridge University Press, 2015], especially 27). On the inconsistent—or at least nonuniform—use of Roman law by early modern scholars, see Daniel Lee, “Sources of Sovereignty: Roman *Imperium* and *Dominium* in Civilian Theories of Sovereignty,” *Politica Antica* 1 (2012): 79–80.

¹⁸ Exceptions to this are Roger T. Simonds, “John Locke’s Use of Classical Legal Theory,” *International Journal of the Classical Tradition* 3, no. 4 (Spring, 1997), and Wolfram Schmidgen, “The Politics and Philosophy of Mixture: John Locke Recomposed,” *The Eighteenth Century* 48, no. 3 [Fall 2007]: 205–23. The latter does not engage directly with the particular theory of mixing I outline here, but does acknowledge the importance of this concept in Locke’s philosophy.

¹⁹ Nasser Behnegar, “Locke and the Sober Spirit of Capitalism,” *Society* 49, no. 2 (2012): 131–38, 136.

²⁰ E.g., “It begins by him removed from the common state nature hath placed it in, it hath by this labour *something annexed to it that excludes the common rights of other men*” (§27, my italics).

²¹ For an analysis, see Olivecrona, “Locke’s theory of Appropriation,” 223–225.

²² David Hume, *A Treatise of Human Nature* (New York: Mineola Publications, 2003), 3.2.3.6n.

²³ See for example, as part of an extensive list: Jeremy Waldron, *The Right to Private Property* (Oxford, UK: Clarendon Press, 1990), especially 184–91; A. John Simmons, *The Lockean Theory of Rights* (Princeton, NJ: Princeton University Press, 1992), especially 266–74; Gopal Sreenivasan, *The Limits of Lockean Rights in Property* (New York: Oxford University Press, 1995); Matthew H. Kramer, *John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality* (Cambridge, UK: Cambridge University Press, 1997). Nozick’s famous critique may be the most vivid: “If a private astronaut clears a place on Mars, has he mixed his labor with (so that he comes to own) the whole planet, the whole uninhabited universe, or just a particular plot?” or “If I own a can of tomato juice and spill it in the sea . . . do I thereby come to own the sea or have I foolishly dissipated my tomato juice?” Nozick also questions here the idea that labor always adds value so that improvement can serve as the principle of ownership, and even though he provides a different example for this latter critique, it seems that the case of the tomato juice in the sea is a good example here too. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 174–75.

²⁴ See *Digest* D.6.1.1.5. I use here the translation edited by Alan Watson, *The Digest of Justinian, Volume 1* (Philadelphia: University of Pennsylvania Press, 1998). See also Simonds, “Locke’s Use of Classical Legal Theory,” 428. I elaborate further on the theory of first occupant in the following section.

²⁵ *Digest*, D.6.1.23.2–5.

²⁶ See next section for specification.

²⁷ *Digest*, D.6.1.3.2

²⁸ *Digest*, D.6.1.5–5.1

²⁹ Tully, *A Discourse on Property*, 118.

³⁰ In his *Essay Concerning Human Understanding*, for example, this is most evident in the realm of reproduction, when bodies emerge as generative in the formation of other bodies: “the mixture of a bull and a mare” produces jumarts, and “the mixture of an ass and a mare” produces mules. Locke then goes on to testify that he “once saw a creature that was the issue of a cat and a rat. And had the plain marks of both about it; wherein nature appeared to

have followed the pattern of neither sort alone, but to have jumbled them both together” (*Essay*, 3.6.23). Wolfram Schmidgen traces the significance of mixture to the *Essay* and Locke’s other theoretical work, and concludes it therefore it must be taken seriously also in relation to property (Schmidgen, “The Politics and Philosophy of Mixture”; John Locke, *An Essay Concerning Human Understanding* [Philadelphia: Hayes & Zell, 1854]).

³¹ More accurately, the body itself, or life, are strictly God’s property, as he created it; man has a derivative right to it. But labor is strictly his own, as his own mode of creation, and so too are its products. See Tully, *A Discourse on Property*, 108–9, 113–14.

³² Simonds, “John Locke’s Use of Classical Legal Theory.”

³³ *Essay* III.19

³⁴ Hagar Kotef, *Movement and the Ordering of Freedom* (Durham, NC: Duke UP, 2015)

³⁵ Chad Luck, *The Body Of Property: Antebellum American Fiction and the Phenomenology of Possession* (New York: Fordham University Press, 2014), 91.

³⁶ Luck, *The Body Of Property*, 92.

³⁷ Paul Youngquist, “Romantic Dietetics! Or, Eating Your Way to a New You,” in *Cultures of Taste/Theories of Appetite: Eating Romanticism*, ed. Timothy Morton (New York: Palgrave Macmillan, 2004), 241.

³⁸ Ephraim, “Everyone Poops,” 11

³⁹ Ephraim, “Everyone Poops,” 3, 6.

⁴⁰ Tully argues that it is the *creation of something new*, the “act of making,” that “gives rise to the right in the product” (Tully, *A Discourse on Property*, 41; see also 116–21 on the new status of the object obtained via “making”).

⁴¹ Matthew H. Kramer, *John Locke and the Origins of Private Property: Philosophical Explorations of Individualism, Community, and Equality* (Cambridge, UK: Cambridge University Press, 1997), 116.

⁴² Behnegar, “Locke and the Sober Spirit,” 137.

⁴³ Kramer, *John Locke*. And like him, many other critics have dismissed this idea of mixture, see note 23.

⁴⁴ Laura Ephraim, “Everyone Poops: Consumer Virtues and Excretory Anxieties in Locke’s Theory of Property”, *Political Theory* (First Published October 24, 2021), 5. Ephraim’s article was published after this paper went into its final production process, and thus it does not occupy the central role it deserves within my argument.

⁴⁵ Interestingly in this regard, when Olivecrona examines the idea that private property entails an “idea of the extension of the personality to physical objects” in natural law theories, he gives one example: the “natural feelings” of embeddedness in our homes. He refers to the town house or the farmland to point to the sense that “something of himself sticks in that house where he has been living so long with his family” (“Locke’s theory of Appropriation,” 224)

⁴⁶ Vanita Seth, *Europe’s Indians* (Durham, NC: Duke University Press, 2010); Uday Singh Mehta, *The Anxiety of Freedom: Imagination and Individuality in Locke’s Political Thought* (Ithaca, NY: Cornell University Press, 1992); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999).

⁴⁷ This is indeed a spatial question: “Had you or I been born at the Bay of Soldania,” Locke claims in his argument against the notion of innate ideas in *The Essay*, “possibly our thoughts, and notions, had not exceeded those brutish ones of the Hottentots that inhabit there: and had the Virginia king Apochancana been educated in England, he had, perhaps, been as knowing a divine [one of the supposedly-innate ideas Locke considers – HK], and as good as a mathematician, as any in it.” (Locke, *Essay*, I.4.12.) While the potential is evident (most of the indigenous Americans Locke had “spoken with” “were otherwise of quick and rational parts enough,” *ibid.*, II.XVI.6), its development appear here as a function of location.

⁴⁸ Carole Pateman and Charles W. Mills, *Contract and Domination* (Malden, MA: Polity Press, 2007).

⁴⁹ Armitage, “John Locke, Carolina, and the ‘Two Treatises of Government’.”

⁵⁰ Armitage, “John Locke, Carolina,” 618. “...and though *afterwards*, in some parts of the world, where the increase of people and stock, *with the use of money*, had made land scarce, and so of some value, the several communities settled the bounds of their distinct territories, and, by laws, within themselves, regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began. And the leagues that have been made between several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the other’s possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries;...yet there are *still* great tracts of ground to be found, *which the inhabitants thereof, not having joined with the rest of mankind in the consent of the use of their common money*, lie waste,...and so still lie in common” (§45, my italics).

⁵¹ Fitzmaurice, *Sovereignty, Property and Empire*, especially 21–24, 114–22, and Chapter 4. See also Richard A. Epstein, “Possession as the Root of Title,” *Georgia Law Review* 13 (1979): 1221–43.

⁵² For the centrality of the Roman theory of first occupant to the British (as well as French) legitimation of colonial expansion, see Pagden, *Lords of All the World*, specifically 76–82. See also Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge, UK: Cambridge University Press, 2010), 133. According to Tully, the justification of colonial expansion was “one of the leading problems of political theory from Hugo Grotius and Thomas Hobbes to Adam Smith and Immanuel Kant”: “Almost all the classic theorists advanced a solution to this problem justifying what was seen as one of the most important and pivotal events of modern history . . . to justify European settlement on the one hand, and to justify the dispossession of the Aboriginal peoples of their property on the other” (James Tully, “Aboriginal Property and Western Theory: Recovering a Middle Ground,” *Social Philosophy and Policy* 11, no. 2 (Summer 1994): 156.) However, whereas it was “one of the most effective means with which to address” imperial expansion, the theory of first occupant “was used to argue opposite viewpoints: namely, either it left little or no place for inhabitants of the lands concerned, or it was used by opponents to claim these people did have rights.” (Fitzmaurice, *Sovereignty, Property and Empire*, 87).

⁵³ Vicki Hsueh, “Cultivating and Challenging the Common: Lockean Property, Indigenous Traditionalisms, and the Problem of Exclusion,” *Contemporary Political Theory* 5, no. 2 (May 2006), especially 200–205; Arneil, *John Locke and America*, 23–41; Tully, “Rediscovering America,” 65–87, 118–132, 140–41.

⁵⁴ “Thus this Law of reason makes the Deer, that Indian’s who hath killed it; ’tis allowed to be his goods who hath bestowed his labour upon it” (§30). The same equation of gathering to labor can be found in §28.

⁵⁵ Barbara Arneil, “The Wild Indian’s Venison: Locke’s Theory of Property and English Colonialism in America,” *Political Studies*, 44, no. 1 (March 1996), 62.

⁵⁶ Tully, “Aboriginal Property,” 160.

⁵⁷ Fitzmaurice, *Sovereignty, Property and Empire*, 120. Accordingly, when he wrote—together with the Earl of Shaftesbury (Anthony Ashley Cooper)—the constitution of Carolina, Locke prioritized the interests of landed proprietors over the interests of mercantile commercial agents. McNally, “Locke, Levellers and Liberty,” 22.

⁵⁸ For an analysis, see David Armitage, *Foundations of Modern International Thought* (Cambridge, UK: Cambridge University Press, 2013); Andrew Dilts, “To Kill a Thief: Punishment, Proportionality, and Criminal Subjectivity in Locke’s Second Treatise,” *Political Theory* 40, no. 1 (February 2012): 58–83; James Farr, “Locke, Natural Law, and New World Slavery,” *Political Theory* 36, no. 4 (August 2008): 495–522; James Farr, “‘So Vile and Miserable an Estate’: The Problem of Slavery in Locke’s Political Thought,” *Political Theory* 14, no. 2 (May 1986): 263–89.

⁵⁹ Particularly see John Locke, “On the Poor Law and Working Schools,” in *Locke: Political Essays*, ed. Mark Goldie (Cambridge, UK: Cambridge University Press, 1997), 182–200. Locke’s logic of rationality, political standing, the ownership of labor, and allocation of work (authoritative or not) is clearly different when considering the poor, working or not. The model of accumulation described here is not applicable in their case. For further analysis, see Kotef, *Movement*, 107–10; Hirschmann, *Gender, Class, and Freedom*.

⁶⁰ Many have made this point; particularly important here is Ince’s *Colonial Capitalism*, since it places this argument concerning money in a colonial setting. Locke’s limit is most clearly stated in §46: “He who gathered a hundred bushels of acorns or apples thereby owned them; as soon as he had gathered them, they were his. His only obligation was to be sure that he used them before they spoiled, for otherwise he took more than his share, and robbed others.” As Macpherson shows, the entire argument of Chapter Five revolves around the removal of these multiple limitations set on accumulation (*Possessive Individualism*, 199–221). Tully insists that Locke’s limitations set on accumulation via his emphasis on the principle of use places him in line with the radical Levelers’ critique on large estates (Tully, *An Approach to Political Philosophy*, 82; see also 128–9). Thus, whereas Locke “certainly argued that the government infringement of property constituted a justification for revolt, . . . by ‘property’ he meant the civil and religious rights of Dissenters and their possessions, which were confiscated during the great persecutions of the Revolution” (*ibid.*, 84). This is one of Tully’s critiques of Macpherson. However, the use of money alters the notion of use as a principle of limitation; with it, this entire emphasis collapses. Indeed, Ince claims that “money inaugurates a paradigm shift from subsistence to accumulation” (*Colonial Capitalism*, 54).

⁶¹ See Macpherson, *Possessive Individualism*, 214–20.

⁶² Macpherson, *Possessive Individualism*, 214–15. For a critique see Tully, *A Discourse on Property*, 136–9.

⁶³ *Digest*, D. 6.23.5.

⁶⁴ Kramer, *Locke and the Origins of Private Property*, 116.

⁶⁵ Brown, *Walled States*, 44.

⁶⁶ That is: “as much land as man tills, plants, improves, cultivates, and can use the products of, so much is his property” (§32).

⁶⁷ Jack Turner, “John Locke, Christian Mission, and Colonial America,” *Modern Intellectual History*, 8, 2 (2011), pp. 267–297.

⁶⁸ Turner, “John Locke, Christian Mission, and Colonial America,” 272.

⁶⁹ Eliot, “Tears of Repentance” quoted in Teresa Bejan, “‘The Bond of Civility’: Roger Williams on Toleration and its Limits,” *History of European Ideas* 37 (2011), 413.

⁷⁰ Teresa Bejan, *Mere Civility: Disagreement and the Limits of Toleration* (Cambridge, MA: Harvard University Press, 2017), 63, quoting Eliot.

⁷¹ Ephraim, “Everyone Poops,” 9.

⁷² For an extended analysis see Ince, *Colonial Capitalism*.

⁷³ This desire to possess becomes identified with rationalism in the course of chapter five, as “the essence of rational behavior undergoes a change. It shifts from industrious appropriation of that modest amount of land that a man could use to produce what he and his family needed, to appropriation of amounts greater than could be used for that purpose.” In the first stage, laboring, appropriation, and rationality were linked together; by the end of the chapter, however, labor is detached from accumulation—which becomes greater and unlimited—and rationality is identified with the latter. Thus, all who do not accumulate (indigenous or poor) can be seen as irrational, despite an original assumption of rationality. Macpherson, *Possessive Individualism*, 232, 234.

⁷⁴ Pagden, *Lords of All the World*, 63.

⁷⁵ Arneil reads Locke’s claim that “occupation” would not in and of itself suffice to justify property (chapter sixteen of the *Second Treatise*), and proposes that “Locke contends . . . that English colonialism must be based on industry and rationality rather than violence”; rendering agriculture not merely an effective technique of colonial land grab, as Wolfe proposes, but, further, a technique bearing an ethical dimension. (“Wild Indian’s Venison,” 72–73.) Pagden, however, argues that this colonial ethic emerged *after* the failure of a model for the conquest of North America, based on the Spanish example—due to the different spatial organization of indigenous settlements (a lack of large cities), and the scarcity of natural resources available for instant exploitation (particularly gold). The plantation model was therefore not the outcome of the original ethics of colonization and industriousness, but a necessity which only became a mode of justification in retrospect (Pagden, *Lords of All the World*).

⁷⁶ See Arneil, “Trade, Plantations, and Property.”

⁷⁷ Famously: “the chief matter of property being now not the fruits of the earth, and the beasts that subsist on it, but the earth itself; as that which takes in and carries with it all the rest” (§32).

⁷⁸ Olivecrona, “Locke’s Theory of Appropriation,” 220.

⁷⁹ Locke thus states that “This measure *did* confirm every man’s possession to a very moderate portion”; or: “there is land enough in the world to suffice double the inhabitants, *had not* the invention of money, and the tacit agreement of men to put a value on it, introduced . . . larger possessions” (§36, my italics; see the use of past tense also in what follows).

⁸⁰ Locke refers to a term (“plant”) used by many English writers of the time as a synonym for “colonize”: “The Latin word *colonia*, Adam Smith explained, ‘signifies simply a plantation.’ Both terms were closely tied to the kinds of community the colonies in practice were, and to the arguments for the legitimacy of their existence” (Pagden, *Lords of All the World*, 79).

⁸¹ The wife, according to Pateman, is just one figure of the servant in Locke (*Sexual Contract*, 47–48).

⁸² For a theorization of this structure see, for example, Etienne Balibar, “Racism as Universalism,” *New Political Science* 8, nos. 1–2 (1989): 9–22; Judith Butler, Ernesto Laclau, and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues On The Left* (London: Verso Books, 2000); Mehta, *Liberalism and Empire*.